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**DECISION**



*F. P. [unclear]*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-189693

DATE: January 17, 1978

MATTER OF: Marine Power & Equipment Co., Inc.

**DIGEST:**

1. Protest against award of one item of surplus property sale to bidder that submitted insufficient bid deposit to cover all items of its bid is denied; neither bid nor solicitation prohibited making partial award, awardee was high bidder on item awarded, and bid deposit was adequate to support partial award.
2. Protest against sales contracting agency's rejection of bid on item of surplus property sales as not representing fair return to Government and resolicitation of item is denied where Government expressly reserved right to reject all bids, sales contracting officer exercised authority pursuant to 40 U.S.C. § 484(e)(2)(c) (1970), and actions appear to be "in the public interest," because higher bids were received as result of resolicitation.

Marine Power & Equipment Co. (Marine) protests against the rejection of its bid on two deck cargo barges under sales invitation No. 16-7024, issued by the Defense Logistics Agency (DLA), Defense Property Ship Sales Office, Portsmouth, Rhode Island.

The barges (Nos. EX-BC-6395 and -6396) were initially offered for sale as items Nos. 1 and 2 of the aforementioned solicitation, with bid opening on July 12, 1977. Peter Kiewit Sons' Company (Kiewit) was the apparent high bidder for the barges at \$83,200 per barge; Marine was the second high bidder with a bid of \$58,800 each. The solicitation required a bid deposit "in an amount not less than 20% of the total bid." Because Kiewit submitted a total bid for three items of \$177,800 with a bid deposit of \$18,000 (10 percent of the total bid), DLA decided that Kiewit's bid could be considered for only one of the two barges. Therefore, item 1, barge No. EX-BC-6395, was awarded to Kiewit on July 14, 1977.

DLA rejected Marine's bid for item 2 as not representing a fair return to the Government. The barge was reoffered under sales invitation No. 16-7029, with bid opening on August 23, 1977. Marine, however, did not submit a bid in response to the solicitation. Triple "A" Machine Shop, Inc. (TAM), submitted the high bid of \$69,000; Kiewit was second at \$63,000. DLA awarded the contract to TAM on November 21, 1977, the extended, final date for acceptance of the firm's bid.

Marine protests DLA's partial award to Kiewit, rejection of its bid, and resolicitation of item 2 on the following grounds:

1. Kiewit's bid deposit was insufficient to cover 20 percent of the firm's total bid; the bid was, therefore, inconsistent with the terms of the sales solicitation and a non-responsive bid.
2. DLA's decision to reject Marine's bid and to reoffer item 2 was an abuse of discretion and not in the Government's best interest because readvertising costs exceed any monetary advantage accruing to the Government upon resolicitation.

Marine initially contends that the deficient bid deposit rendered Kiewit's bid nonresponsive and not entitled to consideration for award. Since 1959 we have consistently held that a bid bond or guarantee requirement is a material part of a solicitation; bids furnished with an inadequate guarantee must, with certain exceptions, be rejected as non-responsive. 38 Comp. Gen. 532, 537 (1959); 39 *id.* 827, 828 (1960). Our Office has, however, sanctioned partial awards to bidders on surplus property sales. 39 Comp. Gen. 617, 618 (1960); B-158461, April 6, 1966; B-168460, February 2, 1970; accord, George Epcar Co. v. United States, 377 F.2d 225 (10th Cir. 1967). This exception to the rule of nonresponsiveness applies, absent bid or solicitation limitations concerning minimum quantities, with regard to those items on which the bidder is the high bidder and which his bid deposit is sufficient to support. Repco Industries, Inc., B-181208, July 29, 1974, 74-2 CPD 67; Ekco Metals, B-189363, August 8, 1977, 77-2 CPD 94. In making a partial award, the Government remains adequately protected by a deposit of 20 percent of the amount as to which the bidder is successful (i.e., the total amount of the award). 39 Comp. Gen. 617, 619 (1960).

DLA asserts, and we agree, that a partial award to Kiewit was authorized in accordance with the Department of Defense regulations applicable to surplus property sales. The Defense Disposal Manual provides for partial awards as follows:

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"A bidder who submits a bid deposit \* \* \* insufficient to cover all of the items for which he is in line for award, should be awarded those items for which the bid deposit would have been adequate had only those items been bid upon, provided such a partial award is not inconsistent with either the bid as submitted by the bidder, or the terms and conditions of the invitation, such as an all-or-none bid qualification. \* \* \*" DOD 4160.21-M CH. XII, par. C (3)(c).


Kiewit's bid of \$80,200 for item 1 was supported by the firm's bid deposit of \$18,000, or 21.6 percent of the amount bid for that item. Although the sales invitation stated that all-or-none bids were acceptable on items 1 through 9, Kiewit's bid was not submitted on an all-or-none basis. Furthermore, neither the terms of the bid nor those of the solicitation otherwise precluded the making of a partial award. Thus, Kiewit's bid as to item 1 was responsive and entitled to consideration for award. See George Epcar Co. v. United States, supra.

Marine also protests DLA's rejection of the firm's bid on item 2 and resolicitation of the barge, contending that the Agency's actions were not in the best interest of the Government and that the cost of readvertising the barge exceeds any monetary advantage which resulted from the resolicitation.

Under paragraph 3 of the General Sale Terms and Conditions (Standard Form 114C) of the sales invitation, the Government reserved the right to reject any or all bids, as may be in the best interest of the Government. A sales contracting officer properly exercises the right to reject all bids "when it is in the public interest to do so." 40 U.S.C. § 484(e)(2)(C) (1970). (Emphasis added.) The statutory authority conferred vests the contracting officer with broad discretion and we will not ordinarily review such actions. 49 Comp. Gen. 244, 249 (1969); Sabin Metal Corporation, E-189759, December 16, 1977. DLA's sales contracting officer rejected Marine's bid on item 2 because of the substantial similarity of the two barges and the significant price difference between the responsive high bids received on the barges. We cannot conclude on the basis of the present record that the rejection of all bids on item 2 was not "in the public interest". The fact that the readvertisement of the barge brought a high bid of \$69,000, a 17.3-percent increase over Marine's bid, supports the contracting officer's determination that cancellation and readvertisement were in the public interest. B-164093, June 10, 1968.

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For the foregoing reasons, we find no legal justification for disturbing the actions taken by the Defense Logistics Agency with regard to the sales of the barges in question. Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States